was a remedy open to the Comptroller. He could have applied to the Board of Review for an order for production of accounts for inspection. Be that as it may, to interpret the provisions of the Income Tax Ordinance as implying that a respondent in an appeal could exercise administrative control over the appellant in any form in regard to the conduct of the appeal after the Board of Review had become seized of the matter, would in my opinion be repugnant to the rules of judicial procedure and the concept of equality before the law.

The appeal is therefore dismissed.

Appeal dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

ABRAHAM v. CHOO JIT FUNG & ANOR.

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) July 26, 1965]

[Singapore — Federal Court Civil Appeal No. 44 of 1964]

Negligence — Running down — Children crossing road — Degree of caution — Question of contributory negligence.

Damages — Rupture of spleen — Removal of spleen — Fracture of femur — Measure of damages.

The 1st respondent, a school girl aged 7 years 10 months, was knocked down by a car driven by the appellant while she was crossing a road with three other girls on their way to school. As a result of this accident she suffered a fracture of the left femur, a rupture of the spleen and underwent an operation to remove the spleen. According to the medical report "the removal of the spleen might be of quite serious consequences were the person to suffer from malaria or other blood dyscrasia". It was contended for the appellant that (i) there was no evidence or no sufficient evidence of negligence on the part of the appellant, and (ii) the child was guilty of contributory negligence.

Held: (1) this was an absolutely clear case of negligence on the part of a driver of a motor vehicle by reason of failure to keep a proper look-out;

(2) a child of the respondent's age in the circumstances of this collision (there was nothing irregular or unsatisfactory in the manner in which she crossed the road) should not be held in any degree or in any way to blame for the accident;

(3) damages at $6,000 to cover a fracture of the left femur and loss of a spleen was a proper sum to award.

FEDERAL COURT.

K. E. Hilborne for the appellant.

H. E. Cashin for the respondents.

Wee Chong Jin C.J. (Singapore) (delivering oral judgment): This appeal arises out of yet another running down action in which a young girl, at the time of the accident aged 7 years and 10 months, one morning while on her way to school with three other girls the eldest of whom was 12 years old was knocked down by a car driven by the defendant.

The evidence of the girl was that while crossing from the Dunearn side of Bukit Timah Road over to the other side she was run down by the defendant's car. According to her immediately before she started to cross the road she looked to the left and saw a car far away and then proceeded to cross the road slightly in front of the three other companions. About half way across the road she looked to the left again and saw the car, according to her still some distance away, and she continued on but almost immediately thereafter she was run into.

The defendant's evidence which emerged in cross-examination disclosed that he did not notice this group of four girls at any stage while they were on the road until he was almost on them and they were in the path of his moving vehicle and he has estimated his speed to be then about 25 to 30 miles per hour. He quite frankly said that he was unable to say whether they ran or walked as they crossed the road as he did not see them till they were in his path. The evidence of the girl as to the way they crossed the road was that they walked.

The learned trial judge on all that evidence came to the conclusion that the defendant had failed to keep a proper look-out as had he done so he would have seen the children when they were on the road. Now it seems to me on the facts that I have just related an absolutely clear case of negligence on the part of a driver of a motor vehicle by reason of failure to keep a proper look-out and there is no substance whatsoever in the argument put forward before us that there was no evidence or no sufficient evidence of negligence on the part of the defendant. In my view the contrary was the case. There was overwhelming evidence that this appellant was negligent in that he failed to keep a proper look-out.

The other ground of appeal is that assuming the appellant to be negligent, the plaintiff had contributed to the accident, in other words was guilty of contributory negligence in that she crossed the road when it was unsafe to do so knowing that there was an oncoming vehicle.

Now the trial judge on this aspect of the matter found that there was nothing irregular or unsatisfactory in the manner the first plaintiff crossed this road. He said "She acted as a normal child of her age would have done under the circumstances. Children are children and they could not be expected to act with the same degree of caution as an adult person. Their judgment of things cannot be as high as that of an adult individual. Could the 1st plaintiff under the circumstances be said to have acted unreasonably? In my opinion she has clearly not done so."

I accept the conclusion arrived at by the trial judge and his view that a child of her age

in the circumstances of this collision should not be held in any degree or in any way to blame for this accident. In those circumstances I would dismiss the appeal so far as liability is concerned.

As regards to quantum of damages the medical evidence which is in the form of a medical report agreed upon by both parties at the trial was that apart from the fracture of the left femur, that this young girl suffered a rupture of the spleen and a splenectomy, that is an operation to remove the spleen was done, and the medical report goes on to say that "the removal of the spleen might be of quite serious consequences were the person to suffer from malaria or other blood dyscrasia". The meaning of that sentence is clearly that if a person whose spleen has been removed were to suffer in future from malaria or other blood dyscrasia, then some quite serious consequences might ensue to him or her because of the loss of the spleen.

Now it is said that there is no evidence apart from this medical report to warrant the trial judge assessing damages in respect of this particular injury at the figure together with the fracture of the left femur at $6,000. We have here a case where a young girl as a result of the collision had to have an operation for the removal of her spleen. She is now without a spleen and because of the defendant's negligence before the removal of the spleen, during the removal of the spleen and for some time after the removal of the spleen she must have undergone fairly severe pain and suffering. On the top of that she is now without a spleen and there is at least some evidence to support the fact that because of this particular loss she may, if she suffers from malaria or some other blood dyscrasia, be subject to some serious consequences because of the fact that she had no longer a spleen. The damages assessed at $6,000 to cover a fracture of the left femur and this loss of a spleen is in my view a proper quantum to award. No argument at all, except the fact of the complaint that there was no other evidence as to the effect of the removal of the spleen was produced by the plaintiff at the trial, was advanced to show that this award was in any way excessive. In the result I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and Tan Ah Tah F.J. concurred.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*

SU KEY & ORS. v. SHANMUGAM & ANOR.

[O.C.J. (Gill J.) August 11, 1965]

[K.L. — Civil Suit No. 642 of 1964]

Damages — Vicarious liability — Occasional driver — Driving on order of car owner — Whether acting as servant or agent.

This was an action for the recovery of damages which arose out of a road accident in which the 2nd defendant's car and a motor cycle ridden by one HWL and the 2nd plaintiff as pillion rider were involved. As a result of the accident HWL was killed and the 2nd plaintiff suffered personal injuries. At the material time the 1st defendant was driving the car in question. The question for decision was whether the 2nd defendant was vicariously liable for the negligence of the 1st defendant.

The 1st defendant was living with the 2nd defendant for whom he occasionally drove his car. He gave evidence on behalf of the plaintiff that on the night in question the 2nd defendant woke him up, handed him the ignition key of the car and asked him to drive *L* and *B* to Kuala Lumpur. The 2nd defendant's story was that he knew nothing about the 1st defendant making use of his car.

Held: on the facts the 1st defendant drove the car at the request of the 2nd defendant. Since he drove the car on such request he was driving on the orders of the 2nd defendant and not for a purpose of his own. In doing so he was acting as the servant or agent of the 2nd defendant, so that the 2nd defendant was vicariously liable for damages in consequence of his negligence.

Cases referred to:—

(1) *Lee Chong* v. *Tan Kwee Low & Anor.* [1961] M.L.J. 98.

(2) *Barnard v. Sully* (1930-31), 47 T.L.R. 557.

CIVIL SUIT.

Kam Woon Wah for the plaintiffs.

M. J. Mathew for the 2nd defendant.

Cur. Adv. Vult.

Gill J.: This action was commenced for the recovery of damages arising out of a road accident on 6th February, 1964 at about 11.50 p.m. at 3½ milestone, Klang Road, Kuala Lumpur, in which motor car No. BC 5484 and motor cycle No. BC 9061 were involved. The motor cycle was ridden by one How Wha Low with the second plaintiff as his pillion rider. As a result of the accident How Wha Low was killed and the second plaintiff suffered personal injuries. The first two plaintiffs are the administratrix and administrator of the estate of How Wha Low deceased, and, apart from suing as legal personal representatives, have also sued on behalf of a number of persons who are said to have been the dependants of the deceased. The first and the second defendants at the material time were the driver and owner respectively of motor car No. BC 5484.

As the first defendant did not enter an appearance to the action, an interlocutory judgment was obtained against him on 21st October, 1964 and final judgment on a motion on 7th April, 1965. Counsel for the second defendant has agreed that the only question to be decided